

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

ALLEN W. YOUNG v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 89549 Mary Beth Leibowitz, Judge

No. E2008-01831-CCA-R3-PC - Filed June 30, 2009

The petitioner, Allen W. Young, filed in the Knox County Criminal Court a petition for post-conviction relief. The post-conviction court summarily dismissed the petition as untimely, and the petitioner appeals. The State filed a motion requesting that this court dismiss the petitioner's appeal as untimely or, in the alternative, affirm the post-conviction court's dismissal of the petition pursuant to Rule 20, Rules of the Court of Criminal Appeals. After review, we conclude that the petition was properly dismissed. Accordingly, the State's motion is granted and the judgment of the post-conviction court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Allen W. Young, Atlanta, Georgia, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Senior Counsel; and Randall E. Nichols, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On September 12, 1990, the petitioner entered in the Knox County Criminal Court an Alford guilty plea in case number 34183 to two counts of aggravated robbery.¹ He was sentenced as a standard Range I offender to eight years for each aggravated robbery conviction with the sentences to be served concurrently with each other but consecutively to the sentence imposed on September

¹ An accused who wishes to plead guilty yet assert his innocence may enter what is known as a "best interest" or an Alford guilty plea. See North Carolina v. Alford, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-168 (1970). A trial court may accept such a plea if the court is satisfied that there is a factual basis for the plea. See Dortch v. State, 705 S.W.2d 687, 689 (Tenn. Crim. App. 1985).

3, 1989, in case number 33178.² Thereafter, according to the petitioner, he received a 460-month sentence for a conviction in the United States District Court. The district court utilized the petitioner's aggravated robbery convictions to determine that the petitioner was a career offender.³

Subsequently, on June 23, 2008, the petitioner filed in the Knox County Criminal Court a petition for post-conviction relief, arguing that his 1990 guilty pleas were involuntary and unknowing because he was not advised of the elements of the offenses prior to the entry of the guilty pleas. On July 14, 2008, the post-conviction court dismissed the petition as time-barred.

On July 23, 2008, the petitioner submitted a motion for reconsideration, arguing that Tennessee Code Annotated section 40-30-102(b) provides an exception to the one-year statute of limitation for post-conviction claims when the "claims [are] based upon sentence(s) that were enhanced because of a previous conviction." The petitioner contended that he met this criteria because his federal sentence was enhanced due to his 1990 convictions. On August 5, 2008, the post-conviction court denied the motion for reconsideration, stating that the petitioner "asserted no valid grounds for relief." On August 14, 2008, the petitioner submitted a notice of appeal, contesting the trial court's ruling on the motion for reconsideration.

On appeal, the petitioner again contends that his post-conviction claims are not time-barred because his 1990 convictions were used to enhance his federal sentence. In response, the State maintains that both the petitioner's post-conviction petition and his notice of appeal were untimely.

First, we agree with the State that the notice of appeal was not timely filed. Rule 3(b) of the Tennessee Rules of Appellate Procedure provides that a criminal defendant may appeal to this court following "a final judgment in a . . . post-conviction proceeding." Rule 4(a) of the Tennessee Rules of Appellate Procedure instructs that "the notice of appeal required by Rule 3 shall be filed with and received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from; however, in all criminal cases the 'notice of appeal' document is not jurisdictional and the filing of such document may be waived in the interest of justice." The Advisory Commission Comments to Rule 4 maintain that "[t]hirty days is sufficient time particularly in light of the fact that a party is required to do nothing to initiate the appellate process except file and serve notice of appeal."

In connection with this issue, this court has noted that

if a timely motion (1) for judgment of acquittal, (2) for a new trial, (3) for arrest of judgment, or (4) for a suspended sentence is filed, the 30 days [for filing a notice of appeal] run from the entry of the order determining such motion or motions. [Tenn. R. App. P.] 4(c). *No*

² The petitioner asserts that his September 3, 1989 conviction was for second degree burglary and that he received a sentence of three years for that conviction.

³ The record does not reflect the offense for which the petitioner was convicted in federal court.

other motion, including one for rehearing, is allowed to suspend the running of the appeal time from the entry of the judgment.

State v. Lock, 839 S.W.2d 436, 440 (Tenn. Crim. App. 1992) (emphasis added). Notably, ““there is no provision in the Tennessee Rules of Criminal Procedure for a “petition to reconsider” or a “petition to rehear.””” Lock, 839 S.W.2d at 440 (quoting State v. Ryan, 756 S.W.2d 284, 285 n. 2 (Tenn. Crim. App. 1988)). Although we have determined that the petitioner’s notice of appeal was untimely, this court may waive the timely filing. In the interest of justice, we will briefly address the petitioner’s concerns.

Initially, we note that “[r]elief under [the Post-Conviction Procedure Act] shall be granted when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103 (2006). However, to obtain relief,

a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken, or if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred.

Tenn. Code Ann. § 40-30-102(a) (2006); see also Williams v. State, 44 S.W.3d 464, 468 (Tenn. 2001). The statute emphasizes that time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter and that the one-year limitations period is an element of the right to file such an action and is a condition upon its exercise. Tenn. Code Ann. § 40-30-102(a).

Tennessee Code Annotated section 40-30-102(a) provides that the statute of limitations begins to run on “the date of the final action of the highest state appellate court to which an appeal is taken.” Clearly, the statute of limitation for filing a post-conviction petition regarding his 1990 aggravated robbery convictions expired years before the petitioner filed his post-conviction petition on June 23, 2008. The petitioner argues that he meets the exception in Tennessee Code Annotated section 40-30-102(b)(3) (2006), which provides that a court may hear a post-conviction petition outside the statute of limitation if

[t]he claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

The petitioner has misconstrued the statute, and, contrary to his assertions, he fails to meet this exception. The petitioner is not arguing that a prior conviction used to enhance the sentences imposed for his 1990 aggravated robbery convictions has been held invalid. Instead, the petitioner's pleadings reveal that he is seeking relief from a sentence that was enhanced in federal court, a court over which this court has no jurisdiction. See John Herbert Talley v. State, No. 03C01-9709-CR-00380, 1998 WL 855508, at *2 (Tenn. Crim. App. at Knoxville, Dec. 11, 1998).

Therefore, we conclude that the post-conviction court properly determined that the petitioner's post-conviction petition was not timely filed and did not satisfy any of the exceptions to the statute of limitation. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA McGEE OGLE, JUDGE